

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF RHODE ISLAND

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EUGENE SCALIA, Secretary of Labor<sup>1</sup>, \*  
United States Department of Labor, \*

Plaintiff, \*

WILLIAM DELANEY, \*

Defendant. \*

CIVIL ACTION FILE NO.  
1:19-cv-00188-MSM-PAS

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**CONSENT JUDGMENT AND ORDER**

Plaintiff Eugene Scalia, Secretary of Labor, United States Department of Labor, pursuant to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, et seq., filed a complaint against defendant William Delaney alleging breaches of his fiduciary responsibilities under ERISA §§404(a)(1)(A), (B), and (D), and §§406(a)(1)(D), (b)(1) and (b)(2) with respect to the Equity Concepts Inc. Profit Sharing and 401(k) Plan ("Plan").

Defendant Delaney has waived service of process of the complaint and has admitted to the jurisdiction of this Court over him and the subject matter of this action.

WHEREAS, Defendant Delaney has caused the amount of \$21,694.50 to be returned to the Plan,

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<sup>1</sup> This action was commenced in the name of R. Alexander Acosta, Secretary of the Department of Labor. As of October 7, 2019, Eugene Scalia became the Secretary of Labor, replacing Patrick Pizzella who had been Acting Secretary of Labor after Mr. Acosta resigned. The current Secretary of Labor, Eugene Scalia, is automatically substituted as the Plaintiff pursuant to Fed. R. Civ. P. 25(d), and the caption of this action is amended accordingly.

The plaintiff and defendant do now consent to entry of a Consent Judgment and Order by this Court in accordance therewith.

Upon consideration of the record herein, and as agreed to by the parties, the Court finds that it has jurisdiction to enter this Consent Judgment and Order.

IT IS THEREFORE ORDERED that:

1. Defendant Delaney is permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. §1001 *et seq.*

2. Defendant Delaney shall work with the Plan custodian, currently Lincoln Financial Group, or with any successor custodian (“Plan Custodian”) to the extent necessary to send out the requisite paperwork to the participants, including distribution forms, to ensure the distribution of the funds, to address missing participants, if any, and take any other administrative steps regarding the Plan in order to carry out the provisions of the Consent Judgment and Order.

3. The funds returned to the Plan by Defendant Delaney shall be distributed in equal portion to each of the Plan participants at the time that Equity Concepts, Inc. entered into voluntary receivership. Defendant will transmit a list to the Plan Custodian with the names of the participants and the amount that each participant will receive.

4. Upon receipt of each completed distribution form from Plan participants, Defendant Delaney shall sign and forward each form to the Plan Custodian to ensure proper distribution to each of the Plan participants.

5. To the extent that there are any missing participants, the Defendant will make efforts to locate such participants in conformance with the Department of Labor (“DOL”) guidance on finding missing participants. Actions taken in compliance with its

Field Assistance Bulletin on Missing Participants No. 2014-01 (“FAB”), or successor guidance, will satisfy this requirement. The FAB is publicly available online at the following link: <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2014-01>. Defendant Delaney will notify the Plan Custodian and EBSA if there are any forms which were returned with incorrect addresses. If Defendant Delaney is unable to locate a missing participant after using the methods set forth in the FAB, the Defendant will direct the Plan Custodian to open an IRA account in the name of the participant and roll over the participant’s plan assets to that account.

6. When all forms have been signed and forwarded to the Plan Custodian, Defendant Delaney will notify EBSA within twenty (20) days by submitting satisfactory documentation to the Regional Director at Employee Benefits Security Administration, J.F. Kennedy Federal Building, Room 575, Boston, MA 02203.

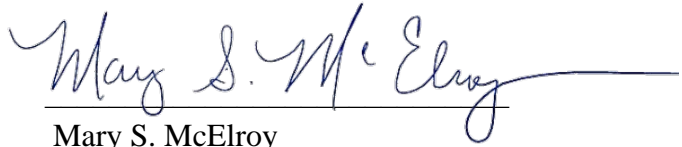
7. When all of the steps set forth in this Consent Judgment have been completed by Defendant and the funds have been distributed in full, the parties shall file a stipulation of dismissal with prejudice.

8. Each party agrees to bear his, her or its own attorneys’ fees, costs and other expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to, attorneys’ fees which may be available under the Equal Access to Justice Act, as amended.

9. The Court shall maintain jurisdiction over this matter only for purposes of enforcing this Consent Judgment and Order.

10. Nothing in this Order is binding on any government agency other than the United States Department of Labor.

DATED: January 22, 2020

A handwritten signature in blue ink, reading "Mary S. McElroy", with a long horizontal flourish extending to the right.

Mary S. McElroy  
United States District Judge

The parties hereby consent to the entry of this Consent Judgment and Order:

FOR THE SECRETARY OF LABOR

Kate S. O'Scannlain  
Solicitor of Labor

Maia S. Fisher  
Regional Solicitor

/s/Marjorie A. Butler  
Marjorie A. Butler, Esq.  
ERISA Counsel

Paul Spanos, Esq.  
Senior Trial Attorney

U.S. Department of Labor  
Office of the Solicitor  
John F. Kennedy Federal Bldg.  
Room E-375  
Boston, MA 02203

/s/William Delaney  
William Delaney  
732 Plainfield Street  
Providence, RI 02909

Date: January 17, 2020

Date: January 17, 2020